

REMARKS/ARGUMENTS

Claims 1, 3-17, 19-25, 27-31 and 33-38 are pending in the present application. Claims 1, 3-17, 19-25, 27-31 and 33-38 have been rejected.

Applicant respectfully responds to this Office Action.

A. Rejection of Claims 1, 3-17, 19-25, 27-31, and 33-38 Under 35 USC § 103

The Examiner rejected claims 1, 3, 7-17, 20-24, 31 and 34-37 under 35 U.S.C. 103(a) as being unpatentable over Shipley, U.S. Patent Number 5,634,114 (hereinafter, "Shipley") in view of Sakata, U.S. Patent Number 6,377,977 (hereinafter, "Sakata"). The Examiner rejected claims 4, 19 and 33 under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Sakata and further in view of Rupp et al., U.S. Patent Number 5,339,431 (hereinafter, "Rupp"). The Examiner rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Sakata and further in view of Larsson et al., U.S. Patent Number 6,226,747 (hereinafter, "Larsson"). The Examiner rejected claim 6 under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Sakata and further in view of Strellis et al., U.S. Patent Number 6,304,882 (hereinafter, "Strellis"). The Examiner rejected claims 25 and 28-30 under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Sakata and further in view of Yinger et al., U.S. Patent Number 5,960,204 (hereinafter, "Yinger"). The Examiner rejected claim 27 under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Sakata and further in view of Yinger and Rupp.

These rejections are respectfully traversed.

The M.P.E.P. states that

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references

must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

M.P.E.P. § 2142. A *prima facie* case of obviousness has not been established regarding claims 1, 3-17, 19-25, 27-31 and 33-38 because the prior art cited does not teach or suggest all the claim limitations.

Claim 1 recites a “method for managing use of a software code by a selected application program.” Shipley does not disclose, nor does it teach or suggest the following required claim step: “detecting the use of the software code.” To the contrary, Shipley teaches a method for version negotiation between a program and a Dynamic Link Library (hereinafter “DLL”).

The portion of Shipley cited to by the Examiner as “detecting” merely discloses a call to a DLL. Shipley states the following:

“Sometime after the application starts its execution (step 7), an initial call to the DLL is made (step 8). . . . [and then,] [i]n response to this initial DLL call, the DLL looks up preferred version number 9 in its version table (step 10).”

Shipley col. 6, lines 23-24 and 32-33. Upon further consideration, this information does not show any detecting of the use of software code, but rather discloses an initial call to the DLL. Shipley states that “[i]n the course of its execution, the application program calls subroutines within the DLL.” Shipley, Col. 4, lines 43-44. Making a call to a DLL is not “detecting the use of the software code.” Making a call to a DLL may be a form of “use of the software code”, but it is not “detecting the use.”

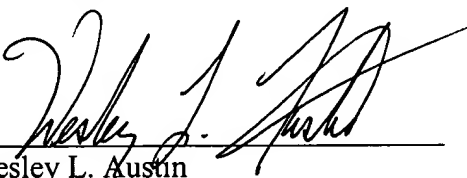
A *prima facie* case of obviousness has not been established regarding claims 1, 17, 25, and 31 because the prior art cited does not teach or suggest all the claim limitations. Specifically, Shipley does not disclose the following claim limitations: “detecting the use of the software code.” Accordingly, Applicants respectfully request that the rejection of claims 1, 17, 25, and 31 be withdrawn.

Additionally, claims 3-16, 19-24, 27-30, and 33-37 depend either directly or indirectly from claims 1, 17, 25, and 31 respectively. Thus, Applicants respectfully request that the rejection of claims 3-16, 19-24, 27-30, and 33-37 be withdrawn for at least the same reasons as those provided above with respect to claims 1, 17, 25, and 31.

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Applicants respectfully assert that claims 1, 3-17, 19-25, 27-31 and 33-38 are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wesley L. Austin', is written over a horizontal line.

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